

Message Text

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ORIGIN TRSE-00

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O 022233Z MAR 76
FM SECSTATE WASHDC
TO AMEMBASSY SEOUL IMMEDIATE

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E.O. 11652: N/A

TAGS: EFIN

SUBJECT: KOREAN DEFENSE TAX

REF: A) SEOUL 1457; B) STATE 47105; C) SEOUL 1494

1. KOREAN RESPONSE (PARAS 1 A AND B OF REF A) TO EMBASSY
INQUIRY REQUESTED REF B) AS TO APPLICABILITY OF DEFENSE
TAX UNDER PROPOSED TREATY LEAVES TOO MUCH IN DOUBT. LEAV-
ING APPLICATION OF EXEMPTION FROM DEFENSE TAX FOR SHIPPING
AND AIR TRANSPORT TO "PRELIMINARY" ROK INTERPRETATION OF
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ARTICLE 10 IS NOT SATISFACTORY, SINCE LANGUAGE OF TREATY
DOES NOT NECESSARILY LEAD TO THAT CONCLUSION. LEAVING
APPLICATION OF DEFENSE TAX TO OTHER U.S. TAXPAYERS TO

INFORMAL ROK INTERPRETATION AND BILATERAL CONSULTATIONS
SUBSEQUENT TO SIGNING ALSO UNSATISFACTORY.

2. EMBASSY REQUESTED TO PROPOSE AMENDING ARTICLE 1,
PARAGRAPH (1)(A) OF TREATY PRIOR TO SIGNATURE TO READ:

"(A) IN THE CASE OF KOREA, THE INCOME TAX, THE CORPORA-
TION TAX AND THE DEFENSE TAX (THE KOREAN TAX), AND"

3. DEPT. PREFERS TO AMEND LANGUAGE IN TREATY AS SUGGESTED
IN PARA 2. IF ROK STILL WISHES TO SIGN TREATY AS SOON AS
POSSIBLE, SUGGEST EMBASSY LANGUAGE EXPERT VERIFY THAT
CHANGES IN KOREAN TEXT AND U.S. TEXT CONFORM TO SUGGESTED
LANGUAGE IN PARA 2. EMBASSY MAY THEN SIGN TREATY. THIS
WILL AVOID PROBABLE DELAY OF AIRPOUCHING THE TWO WORD
CHANGE IN KOREAN TEXT TO DEPT FOR TRANSLATION VERIFICA-
TION. EMBASSY SHOULD NOTE HOWEVER THAT IN IMPROBABLE
EVENT THAT TRANSLATION NOT ACCEPTABLE TO DEPT., ROK MUST
BE PREPARED TO ACCEPT APPROPRIATE ALTERATION IN KOREAN
TEXT.

4. IF PARAGRAPH 2 SUGGESTION NOT ACCEPTABLE TO ROK, U.S.
WOULD CONSIDER NOTE FROM ROK AT TIME OF TREATY SIGNING
SAYING THAT ROK INTERPRETS THE LANGUAGE OF ARTICLE 1(1)(A)
AS CLEARLY INCLUDING DEFENSE TAX. WE WOULD PUBLISH THIS
NOTE WITH THE TREATY AS AN OFFICIAL INTERPRETATION.

5. DEPT. REQUESTS EMBASSY PROVIDE AVAILABLE INFO ON
WHETHER ALL THIRD COUNTRY SHIPPING AND AIRLINE ACTIVITIES
(EXCEPT JAPANESE) ARE SUBJECT TO DEFENSE TAX IN ACCORDANCE
WITH MFN PROVISION OF U.S.-ROK FCN.

6. FYI - ARTICLE 25 OF DOUBLE TAX TREATY WILL RELIEVE
TEMPORARY KOREAN WORKERS IN GUAM FROM FICA TAX. EXEMPTION
PROVIDED PHILIPPINE WORKERS UNDER SECTION 3121(B) 18 OF
INTERNAL REVENUE CODE WAS THE RESULT OF STATUTORY CHANGE
IN THE TAX LAW. IT IS VERY UNLIKELY U.S. LAW COULD BE
CHANGED MORE QUICKLY THAN THROUGH THE PENDING TREATY. INGERSOLL
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